

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STEVEN CURTICIAN,

Plaintiff,

v.

UNIT MANAGER KESSLER *et al.*,

Defendants.

C.A. No. 07-286 Erie

MEMORANDUM ORDER

Plaintiff's Complaint was received by the Clerk of Court on October 17, 2007, was deemed filed as of October 19, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Defendants filed their "Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment" on October 10, 2008 [Doc. #41]. The magistrate judge's report and recommendation [Doc. #54], dated May 29, 2009 and filed on June 1, 2009, recommended that the Defendants' "Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment" be granted in part and denied in part.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and after being granted an extension of time until July 15, 2009 to file his objections, he filed his objections to the report and recommendation on July 17, 2009 [Doc. #57]. Service was also made on the Defendants, who did not file any objections.

Rule 72 of the Federal Rules of Civil Procedure provides, in pertinent part "the district court may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Fed.R.Civ.P. 72(b). For the reasons set forth below, we accept the recommended decision and adopt it as our own.

AND NOW, this 1th day of August, 2009, after de novo review of the pleadings and documents in the case, together with the report and recommendation, it is hereby ORDERED,

ADJUDGED AND DECREED that Defendants' "Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment" [Doc. #41] is GRANTED in part and DENIED in part as follows:

(1) Defendants' motion is GRANTED with respect to Plaintiff's claims against Defendants Beard and Brooks, said claims are DISMISSED for failure to state a claim upon which relief can be granted, and said Defendants are terminated from this case;

(2) Defendants' motion is GRANTED with respect to Plaintiff's claims for monetary damages against the individual Defendants in their official capacities based upon sovereign immunity and said claims are DISMISSED;

(3) Defendants' motion is DENIED as to Plaintiff's Eighth Amendment failure to protect claim against Defendant Kessler based upon Plaintiff being placed in inmate Steifel's cell;

(4) Defendants' motion is GRANTED and summary judgment is entered in favor of Defendants with respect to the remainder of Plaintiff's Eighth Amendment failure to protect claims;

(5) Defendants' motion is GRANTED and summary judgment is entered in favor of Defendants with respect to Plaintiff's claim(s) arising from the increase in his custody level;

(6) Defendants' motion is DENIED with respect to Plaintiff's retaliation claim; and

(7) Defendants' motion is GRANTED and summary judgment is entered in favor of Defendant McKissock as to Plaintiff's due process claim against her.

It is further hereby ORDERED, ADJUDGED, and DECREED that the report and recommendation of Magistrate Judge Baxter, dated May 29, 2009 and filed June 1, 2009, is adopted as the Opinion of this Court.


MAURICE B. COHILL, JR.
Senior District Court Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge
all parties of record